

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0597P
Use Tax
For Calendar Years 1999, 2000, and 2001

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to remit use tax on all of its taxable purchases and had no use tax accrual system in place.

Taxpayer requests abatement of the penalty because the local revenue office did not advise him when he started his construction business.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the Department did not advise him regarding use tax when he began his construction business.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer failed to remit use tax due on one hundred (100%) of its clearly taxable items and had

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no use tax accrual system in place. Taxpayer filed yearly returns indicating no tax is due. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

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